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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/360,453	07/26/1999	HIROSHI SUGITANI	35.G1250DIV.	4210

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EXAMINER

TUGBANG, ANTHONY D

ART UNIT PAPER NUMBER

3729

DATE MAILED: 07/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/360,453	Applicant(s) SUGITANI ET AL. <span style="float: right;">CW</span>	
	Examiner A. Dexter Tugbang	Art Unit 3729	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

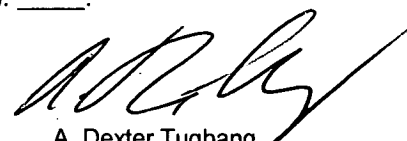
Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 7-15.

Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
 A. Dexter Tugbang  
 Primary Examiner  
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Attachment to Advisory Action

In the Request for Reconsideration (response filed on 5/26/04), the applicant(s) assert that the prior art does not teach “providing...generating elements” (lines 8-14 of Claim 7) with similar limitations in Claim 11.

In Sugitani, the applicant(s) appear to have a misunderstanding of what is being read as the claimed “bottom surface” (line 9 of Claim 7) and “heat acting surface” (line 10 of Claim 7) as these limitations appear in both Claims 7 and 11. To clarify, both of the above surfaces are taken from dielectric thin film 3 as this is formed over heating elements 2 in Figure 1 of Sugitani. In Figure 1, the portion of film 3 on the sides of heating elements 2 is read as the “recessed portions in a surface” of film 3 on the substrate 1. The “bottom surface” is read as the top surface of film 3 on the sides of the heating elements and the “heat acting surface” is read as the top surface of the film 3 that is formed directly over the heating elements. Because the top surface of film 3 that is formed over the heating elements 2 is higher than the top surface of film 3 that is formed to the sides of the heating elements, the “bottom surface” is lower than the “heat acting surface”. Accordingly, Sugitani fully satisfies the first step in each of Claims 7 and 11 of “providing...of said substrate”. The examiner has not read any surfaces related to layer 4 into the last Office Action as the applicant(s) believe.

With respect to the last step of “fitting...elements”, as recited in each of Claims 7 and 11, the applicant(s) believe that Sugitani is deficient on these limitations for the reasons discussed in the response filed on 5/26/04 (beginning at the bottom of page 7 through the top of page 10).

The examiner traverses by reiterating some of points discussed in the Final Rejection (dated 3/17/04) and adding the following remarks. The examiner’s position is that the

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applicant(s) reasoning is not in line with what is being recited in the claim. The claimed "ceiling member" in Sugitani was read as plate 9 in Figure 8. While Sugitani, for example in Figures 6 and 7, does show fitting of the recessed portions (of film 3) to the flow passage walls 7, this is not considered to be completed until the "ceiling member" is formed and assembled with an inherent force on the arrangement of the heating elements 2 (shown in Figure 8). The applicant(s) appear to be implying that the claimed "force" or "vibrating" force somehow moves either the "flow passages" or "energy generating elements" to cause alignment. The examiner notes that any movement of the "flow passages" or "energy generating elements" is not recited in the claims and it appears that the applicant(s) are arguing more than that which is claimed. Perhaps, further limitations to this effect would avoid the primary reference of Sugitani.